Supreme Court, U.S.
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No. 91-99

In the Supreme Court of the United States

OCTOBER TERM, 1991

RONNIE CURTIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

THOMAS W. OSBORNE
Commander, JAGC, USN

J. RICHARD CHEMA
Lieutenant Commander, JAGC, USN
Appellate Government Counsel
Office of the Judge Advocate General of the Navy
Washington, D.C. 20374-1111

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Petitioner claims that (1) the President lacks the authority to promulgate Rule for Courts-Martial 1004, which establishes court-martial sentencing procedures in capital cases; (2) Rule 1004 is unconstitutional under separation of powers principles; and (3) Article 16(1)(A) of the Uniform Code of Military Justice, 10 U.S.C. 816(1)(A), violates the Constitution by permitting a military defendant to receive a capital sentence from a court-martial panel containing nine members.

1. Petitioner, a member of the United States Marine Corps, was an administrative clerk at Camp Lejeune in North Carolina. First Lieutenant James Lotz was petitioner's superior officer. Apparently due to his belief that Lotz was racially prejudiced, peti-

tioner decided to kill Lotz. Late one evening, petitioner broke into the supply building and stole a K-Bar combat knife. Petitioner gained entry to the Lotzes' home through the ruse that a member of the supply section had been involved in a car accident and needed emergency help. While Lotz was calling for assistance, petitioner fatally stabbed Lotz in the chest and back. Lotz called to his wife before he died. When Mrs. Lotz entered the room, petitioner stabbed her seven times in the head, neck, and back. As. Mrs. Lotz lay on the floor dying, petitioner ripped and cut off her panties and fondled her vaginal area. Petitioner ultimately made his getaway in one of the Lotzes' cars. In so doing, petitioner crashed into a ditch. Petitioner thereafter confessed to the state police during their investigation of the accident. Pet. App. 1a-2a, 2b-5b; 32 M.J. 252, 254 (C.M.A. 1991); 28 M.J. 1074, 1077-1078 (N.M.C.M.R. 1989).

Following a general court-martial at Camp Lejeune, petitioner was convicted of two premeditated murders, larceny, burglary, unlawful entry, indecent assault, damage to government property, and disobeying a general order, in violation of Articles 118, 121, 129, 130, 134, 108, and 92 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. 918, 921, 929, 930, 934, 908, and 892. The court-martial panel sentenced petitioner to death. The convening authority approved the findings and sentence. The Navy-Marine Corps Court of Military Review, sitting en banc, affirmed. Pet. App. 1b-43b; 28 M.J. 1074 (1989). The Judge Advocate General of the Navy thereafter filed the record with the Court of Military Appeals for its mandatory review pursuant to Art. 67(b)(1), UCMJ, 10 U.S.C. 867(b)(1).

As part of its mandatory review, on May 10, 1990, the Court of Military Appeals entered an order set-

ting oral argument and directing the parties separately to argue two questions: (1) whether Rule 1004 is an impermissible extension of presidential authority; and (2) whether Rule 1004 is facially unconstitutional under the Fifth and Eighth Amendments. 31 M.J. 395. The court heard oral argument on those questions on August 29, 1990. On April 18, 1991, the court issued an opinion, holding that the President has the authority to promulgate Rule 1004 and that the Rule is facially constitutional. 32 M.J. 252. On July 8, 1991, the court heard oral argument on the remaining questions in the case. The court has not yet issued a decision on those questions. Accordingly, it has not entered a final judgment in this case. Pet. App. 38a; 32 M.J. at 271.

2. Petitioner claims that the President lacks the authority to promulgate Rule 1004 and that, if the President does have such power, the Rule is unconstitutional under separation of powers principles. Petitioner also maintains that the imposition of a capital sentence by a court-martial panel consisting of nine members is unconstitutional. Whatever the merits of petitioner's claims, they are not ripe for review by this Court. The Court of Military Appeals has not yet entered a final judgment in this case, because there are issues yet to be resolved that could affect petitioner's convictions or sentence. The court below issued the challenged decision as the first step in a two-step process for resolving petitioner's claims. If the Court of Military Appeals rules in petitioner's favor on any of his remaining contentions and orders a new trial or sentencing hearing, his present claims will become moot. If, on the other hand, the Court of Military Appeals rejects petitioner's remaining contentions and affirms his convictions and sentence,

petitioner will then be able to present his current claims to this Court, together with any other contentions he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the Court of Military Appeals' initial decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

THOMAS W. OSBORNE
Commander, JAGC, USN

J. RICHARD CHEMA
Lieutenant Commander, JAGC, USN
Appellate Government Counsel
Office of the Judge Advocate
General of the Navy

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* Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court so requests.

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